

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:15-CR-00015-KDB-DCK**

USA,

Plaintiff,

v.

MICHAEL FLUCKIGER

Defendant.

ORDER

THIS MATTER IS BEFORE THE COURT on the Government's Motion to Authorize Payment from Inmate Trust Account (Doc. No. 222) ("Motion"). The Defendant has not responded to the Government's motion. Therefore, pursuant to 18 U.S.C. §§ 3613(a), 3664(n), and 3664(k), the Court **GRANTS** the United States' Motion.

BACKGROUND

On December 2, 2015, Defendant Michael Fluckiger voluntarily pled guilty to engaging in a child exploitation enterprise (Doc. Nos. 46, 47, 49). On January 12, 2017, the Court sentenced him to a total of two hundred forty (240) months' imprisonment and a lifetime of supervised release. (Doc. No. 118). The Court also imposed a \$100.00 special assessment. *Id.* In September 2017, the Court amended the original judgment and ordered Defendant to pay \$155,000 in restitution. (Doc. No. 171). \$70,000 of the \$155,000 was imposed jointly and severally with his co-defendants, and the remaining \$85,000 was his sole liability. *Id.* To date, Defendant has paid \$865.00 toward his criminal monetary penalties. Defendant remains in federal custody and is currently assigned to the Federal Correctional Institution in Yazoo City, Mississippi. He is

scheduled to be released from federal custody in March 2032. The current balance of Defendant's restitution debt is \$84,535.31. (Doc. No. 222).

The United States Attorney's Office recently learned that Defendant currently has approximately \$1,436.75 in his inmate trust account maintained by the Bureau of Prisons (“BOP”). The United States moves for entry of an order authorizing the BOP to turn over \$1,236.75 of the funds held in Defendant's inmate trust account to the Clerk of Court as partial payment toward the restitution owed to the victims of Defendant's crime.

DISCUSSION

Title 18, United States Code, section 3613 sets out procedures for the United States to enforce criminal monetary penalties, including restitution and fines. *See* 18 U.S.C. §§ 3613(a) and (f). Pursuant to 18 U.S.C. § 3613(c), upon entry of judgment, a lien arises against all the defendant's property and rights to property, including the defendant's interest in funds held by the BOP in his inmate trust account. *See* 18 U.S.C. § 3613(a) (United States may enforce restitution against all property and rights to property of the defendant).

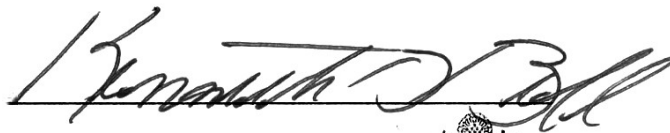
The Mandatory Victims Restitution Act (“MVRA”) permits the United States to use “all other available and reasonable means” to collect restitution. *See* 18 U.S.C. § 3664(m)(1)(A)(ii). The MVRA also requires that a defendant's substantial resources received from any source during his term of incarceration be applied to his outstanding restitution obligation. *See* 18 U.S.C. § 3664(n); *see, e.g., United States v. Bryan Keith Flowers*, Case No. 5:04-CR-00001, (W.D.N.C. September 16, 2021) (ordering turnover of funds in inmate trust account pursuant to § 3664(n) and § 361). The MVRA further authorizes the Court to order payment of a restitution obligation upon notice of a material change in a defendant's economic circumstances that affects his ability to pay restitution “as the interests of justice require.” *See* 18 U.S.C. § 3664(k).

The funds at issue are currently in the Government's possession and the Government has a valid lien over the funds. Further, because the property at issue is cash, it does not fall within any applicable categories of exempt property that a defendant may claim in a criminal case. *See* 18 U.S.C. § 3613(a)(1) (setting forth the applicable IRS property exemptions for criminal cases). Thus, the Court concludes that an order authorizing the turnover of the Defendant's property is appropriate here.

IT IS THEREFORE ORDERED that the Government's Motion to Authorize Payment from Inmate Trust Account (Doc. No. 222) is **GRANTED**, and the Bureau of Prisons is hereby authorized to turn over to the Clerk of Court \$1,236.75 held in the inmate trust account for the Defendant as payment toward his restitution obligation in this case.

SO ORDERED ADJUDGED AND DECREED.

Signed: September 30, 2024

A handwritten signature in black ink, appearing to read "Kenneth D. Bell", written over a horizontal line.

Kenneth D. Bell
United States District Judge

